IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Robert T. Uthe	)	Confirmation No.: 5041
	)	
Application No. 10/711,042	)	Group Art Unit: 2616
	)	
Filed: August 19, 2004	)	Examiner: Leon T. Andrews
	)	
Title: Method and System to Evaluate	)	
Utilization of Resources	)	

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants submit that the current and preceding office actions issued by the Office in the present application contain clear errors in the Office's rejections as well as omissions of one or more essential elements needed for a *prima facie* rejection under 35 U.S.C. § 102.

In the Final Office Action, claims 1-17 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication 2002/0194251 by Richter et al. ("Richter"). For a proper rejection based on Section 102, M.P.E.P. § 2131 provides that the cited reference must teach every element of the claim. Applicant respectfully submits that Richter does not teach every element of the claims and thus, the Examiner's rejection is in clear error. Claim 1 recites:

> "tracking a sequence of utilization of the plurality of resources in responding to a request or a set of requests; and
> representing a quantity of occurrences of each segment linking resources in the sequence."

Paragraphs [0020] and [0025] of Richter were cited in the Office Action in rejecting claim 1. Paragraphs [0020] and [0025] of Richter recite:

> "[0020]. . . the disclosed systems and methods may be implemented to monitor, predict and/or control system/subsystem run-time resource utilization values in relation to threshold resource utilization values to avoid over utilization of system/subsystem resources that may result in degradation

of service quality such as may be experienced in traditional network-based QoS environments, and/or to enforce operational/allocation policies based on threshold levels. By tracking current resource utilization in relation to maximum resource utilization threshold/s, multiple tenants may be allocated available system/subsystem resources according to one or more differentiated service policies in a manner that guarantees sufficient system/subsystem resource availability to satisfy such policies without degradation of service quality . . .

[0025] . . . tracking total resource consumption to perform the multiple information manipulation tasks in the information management environment based on the individual resource utilization values. In this method, at least one of the individual resource utilization values may be associated with a particular information manipulation task using an association that is configurable."

Accordingly, in paragraph [0020], Richter discloses tracking <u>current</u> resource utilization in relation to maximum resource utilization threshold(s) in order to avoid over utilization of a system and, in paragraph [0025], Richter discloses tracking total <u>current</u> resource consumption. Richter does not teach, disclose or suggest tracking *a sequence* of resource utilization. Applicant respectfully submits that there is no teaching or suggestion in Richter of tracking a sequence of utilization of the plurality of resources in responding to a request or a set of requests as recited in claim 1.

In addition, paragraph [0217] at lines 8-12 of Richter was cited in rejecting claim 1. Paragraph [0217] of Richter recite (lines 8-12 are emphasized):

". . . At step 120, the required resources identified in step 115 may be polled to determine whether the current workload of the required resources is such that the required resources will be available to process the current request for content upon its acceptance <u>Available resources may be defined, for example, as those required resources that are immediately available to process a request for content, or those resources that will be available within a predefined amount of time</u>."

Accordingly, Richter merely discloses that available resources are resources that are available with a certain amount of time in order to process a request. There is absolutely no disclosure of "representing a quantity of occurrences of each segment linking resources in the sequence," as recited in claim 1. Accordingly, for the foregoing reasons, claim 1 is respectfully submitted to be patentable over Richter and reconsideration and withdrawal of the section 102 rejection of claim 1 is respectfully requested.

Regarding the rejection of claims 2-7 under 35 U.S.C. § 102 as being anticipated by Richter, these claims recite additional features which further patentably distinguish over Richter. For example, claim 2 recites:

> "representing each resource by a predetermined resource symbol; and
>
> representing each segment between a pair of resources in the sequence by a line between the resource symbols corresponding to the pair of resources, wherein each line has a selected line width corresponding to a quantity of occurrences of the segment in responding to the request or set of requests."

In rejecting claim 2, paragraph [0032] of Richter, which is the description of Figure 1A, was cited. Paragraph [0032] recites:

> "FIG. 1A is a representation of components of a content delivery system according to one embodiment of the disclosed content delivery system."

Paragraph [0032] is merely a description of Figure 1A in the "Brief Description of the Drawings" Section of Richter's patent application. Richter does not teach that his invention presents the content delivery system in Figure 1A. This block diagram is purely for purposes of illustrating how the invention of Richter is interconnected. However, in no way does the actual invention of Richter disclose representing resources by a predetermined resource symbol or representing each segment between a pair of resources in the sequence by a line between the resource symbols corresponding to the pair of resources, as recited in claim 2. Accordingly, claim 2 is respectfully submitted to be patentable over Richter.

With regard to claim 3, claim 3 recites "representing a time duration since each resource was last utilized." In rejecting this claim, lines 10-11 of paragraph [0217] was cited. Lines 8-11 of paragraph [0217] recite "Available resources may be defined, for example, as . . . those resources that will be available within a predefined amount of time." However, Applicant submits that Richter does not disclose representing a time duration since each resource was last utilized. Indeed, there is no time duration *represented* at all and there is no discussion of a time duration "since each resource was last utilized." Accordingly, claim 3 is submitted to be patentable over Richter.

Turning to claim 4, claim 4 recites:

> "representing each resource by a predetermined resource symbol; and
> presenting each resource symbol at a predetermined level or degree
> of translucency corresponding to a time duration since the resource was
> last utilized."

In rejecting this claim, paragraph [0217] was again cited. However, nowhere in this paragraph, or in any other paragraph of Richter, does Richter disclose presenting a resource symbol at a predetermined level or degree of translucency corresponding to a time duration since the resource was last utilized. In fact, translucency was not even mentioned in Richter. Further, similar to the argument presented above with regard to claim 2, Richter does not teach that the resources are represented by symbols. Richter only employs drawings in the patent to illustrate what his invention is and how it works and the invention itself does not teach representing resources by predetermined resource symbols. In the Final Office Action, the Examiner stated that the claim element "degree of translucency was optional." This is incorrect. The claim reads that the "level or degree" so that the claim requires either "level of translucency" or "degree of translucency," not a complete omission of the claimed element "translucency." Applicant submits that the Office has not even considered the claim feature of "translucency" and thus, this rejection is improper. Accordingly, claim 4 is respectfully submitted to be patentable over Richter.

Additionally, claims 2-7 depend either directly or indirectly from independent claim 1. Because of this dependency, claims 2-7 include all of the features of independent claim 1. Therefore, claims 2-7 are also submitted to be patentably distinguishable over Richter, and reconsideration and withdrawal of the Section 102 rejection of these claims is requested.

With respect to the rejection of independent claim 8 under 35 U.S.C. § 102(b) as being anticipated by Richter, claim 8 recites similar features to claims 1 and 4. Further, claim 8 recites "representing a time duration since each resource was last utilized." Again paragraph [0217] was cited along with lines 9-11 of paragraph [0223] and element 6230 of Fig 19 of Richter. However, paragraph [0217] only discusses that "available resources" are those available within a certain time, paragraph [0223] only discloses than there is an evaluation to determine if adequate resources are available within a specific time, and element 6230 of Fig. 19 is only resource usage accounting and Fig. 19 merely discloses that requests are evaluated to identify the resources required to process the given request. There is simply no disclosure in Richter of *"representing* a time duration since each resource was last utilized." In fact, there is absolutely no disclosure of

representing of anything in Richter. Accordingly, claim 8 is respectfully submitted to be patentable over Richter.

Regarding the rejection of claims 9-11 under 35 U.S.C. § 102 as being anticipated by Richter, these claims recite additional features which further patentably distinguish over Richter. Additionally, claims 9-11 depend either directly or indirectly from independent claim 8. Because of this dependency, claims 9-11 include all of the features of independent claim 8. Therefore, claims 9-11 are also submitted to be patentably distinguishable over Richter.

With regard to the rejection of independent claim 12 under 35 U.S.C. § 102(b) as being anticipated by Richter, claim 12 recites similar features to claims 1 and 8. Accordingly, claim 12 is respectfully submitted to be patentable over Richter for the same reasons as discussed with respect to claims 1 and 8.
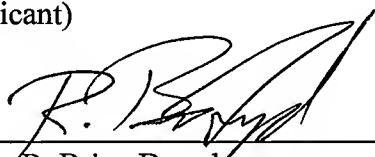
Regarding the rejection of claims 13-17 under 35 U.S.C. § 102 as being anticipated by Richter, these claims recite additional features which further patentably distinguish over Richter. Additionally, claims 13-17 depend either directly or indirectly from independent claim 12. Because of this dependency, claims 13-17 include all of the features of independent claim 12. Therefore, claims 13-17 are also submitted to be patentably distinguishable over Richter.

For at least the above reasons, the Examiner has failed to show that every element of any claim is present in the art cited. Applicants believe they have responded to all of the concerns raised by the Examiner. As the Examiner's rejections have been shown to be in clear error and lack essential elements of a *prima facie* Section 102 rejection, Applicant requests that all pending claims be allowed to issue.

Respectfully submitted,
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